UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,164	04/03/2001	Frank Duimovich	317332.02	2393

22971   7590   02/27/2007
MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND, WA 98052-6399

EXAMINER
CHANG, JUNGWON

ART UNIT	PAPER NUMBER
2154	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	02/27/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/27/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jranck@microsoft.com
roks@microsoft.com
ntovar@microsoft.com

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 November 2006</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14,16,18-24 and 26-52* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14, 16, 18-24 and 26-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is in response to RCE filed on 11/27/06.

2.   Claims 15, 17 and 25 have been cancelled. Claims 1-14, 16, 18-24 and 26-52

are presented for examination.

3.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

11/27/06 has been entered.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   **Claims 1, 2, 5-8 and 10-12** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Reps et al. (US 6,070,190), hereinafter Reps, in view of Cohen et al.

(US 6,356,898).

6.   As for claims 1 and 11, Reps discloses a method of managing a data access

system configured to transfer data over a communication network between a server

system and a plurality of user sites in response to requests from network browsers at

the user sites (fig. 1) the method comprising:

monitoring a first user site of the plurality of user sites (210, fig. 2; col. 9, lines 8-

13, "a set of client computers also coupled to the network 103"; col. 13, line 66 – col. 14,

line 39) to obtain performance data of the data access system (col. 11, lines 14-27; col.

13, line 66 – col. 14, line 39, "total duration of the transaction cycle from request to

response, the time of day of the service request"), the performance data including

performance metrics of a data transfer operation in the data access system performed

in response to a network browser request initiated by a user of the first user site (col. 1,

lines 21-46, "monitoring of availability and response time or other desired performance

metrics"; col. 11, lines 23-27, "performance criteria includes such metrics as maximum

allowable response time, and/or a maximum number of failed successive attempts"; col.

14, lines 11-39, "availability and response time are the key metrics"), the monitoring

being controlled by a monitoring agent resident at the first user site (col. 9, lines 47-67,

"application monitoring and alerting probe");

creating preliminary summary data of the monitored performance data (col. 14,

lines 11-39);

transmitting data indicative of the preliminary summary data from the monitoring

agent (col. 14, lines 11-39, "transaction record from the AMA probe 201");

receiving the data indicative of the preliminary summary data transmitted from

the monitoring agent (311, fig. 3; col. 14, lines 11-39, "transaction record from the AMA

probe 201");

collecting a quantity of the data received (305-306, fig. 3; col. 14, lines 3-39,

"transaction record 311 which forwarded via the AMA probe code 303 to a storage

repository 305, 306");

summarizing the quantity of the data collected to produce summarized

performance data (figs. 7-12; col. 16, line 35 – col. 17, line 19; col. 20, line 21 – col. 21,

line 43); and

storing the summarized performance data into a database (504, fig. 5; col. 16,

line 35 – col. 17, line 19).

7.   Although Reps discloses monitoring the time of day of the service request and

total duration of the transaction cycle from request to response (col. 13, line 66 – col.

14, line 39), and web browser is an application that inherently sends the request, Reps

does not specifically use phrase "monitoring a network browser of a user". Cohen

explicitly discloses monitoring a network browser of a user (12, fig. 1; col. 3, lines 40-67;

col. 4, line 62 – col. 5, line 63). It would have been obvious to one of ordinary skill in the

art at the time of the invention to combine the teachings of Reps and Cohen because

Cohen's monitoring the browser would automatically generate useful information for the

client based on the user's browsing history. (Cohen, col. 2, lines 48-51).

8.   As to claims 2 and 3, Reps discloses performance of data access system for a

specific time interval (col. 17, lines 8-39).

9.   As for claim 4, Reps discloses wherein the performance data includes a

timestamp means identifying a time when the performance data was observed (307, fig.

3, "timer"; col. 14, lines 11-41, "Date: 05/28/1997, Monitor Local Time: 19:54:40") and

wherein the step of collecting comprises collecting the performance data that was

observed during the same time interval (col. 17, lines 8-39).

10.   As for claim 5, Reps discloses receiving data indicative of the performance of a

plurality of data access systems from said performance monitoring from said

performance monitoring agents (col. 6, line 66 - col. 7, line 13); and filtering said data

received to pertain to a selected data access system (col. 6, line 66 -col. 7, line 13).

11.   As for claim 6, Reps discloses the method of claim 1 wherein the performance

data is correlated to factors of interest (col. 14, lines 3-10).

12.   As for claim 7, Reps discloses the method of claim 1 wherein the server system

comprises at least one Hyper Text Transfer Protocol (HTTP) server (web server; 508,

fig. 6).

13.   As for claim 8, Reps discloses the method of claim 7 wherein the performance

data comprises a summary of performance metrics for a HTTP page (figs. 7-12; col. 16,

line 35 – col. 17, line 19; col. 20, line 21 – col. 21, line 43).

14.   As for claim 9, Reps discloses ascertaining quality of service conditions of said

data access system (col. 1, lines 21-46, "to quickly provide the appropriate services").

15.   As for claim 10, Reps discloses the method of claim 1 further including the step

of calculating further summarized data using said stored summarized data (col. 17, lines

8-19).

16.   As for claim 12, Reps discloses a performance management system that

monitors data transferred between at least one remote site and at least one user site

(210, 211, fig. 1), comprising:

        a network browser (602, fig. 6) disposed on a first user site of the at least one

user site and configured to browse the at least one remote site, in response to a request

by a user of the first site, for transferring data between the at least one remote site and

the first user site (col. 11, lines 14-27; col. 13, line 66 – col. 14, line 41);

        a client that resides on the at least one user site (col. 9, lines 8-13, "a set of client

computers also coupled to the network 103) and collects performance data associated

with the data received from the at least one remote site (col. 9, lines 47-67, "application

monitoring and alerting probe"); and

an agent in communication with the client and residing on the at least one user

site (201, fig. 2), the agent being adapted to create preliminary summary data of the

performance data (col. 14, lines 11-41, "transaction record from the AMA probe 201").

17.   Reps teaches capturing performance data associated with the transfer of HTML

based applications over the internet (col. 8, lines 56-64). However, Reps does not

explicitly teach capturing performance data associated with web page object retrievals.

Cohen teaches capturing performance data associated with web page object retrievals

(20, fig. 1; col. 3, lines 14-67; col. 4, line 46 – col. 5, line 63). It would have been

obvious to one of ordinary skill in the art at the time of the invention to combine the

teachings of Reps and Cohen because Cohen's capturing performance data associated

with web page object retrievals would allow grouping together sets of related documents

(Cohen, col. 3, lines 1-20).

18.   **Claims 13, 14, 16, 18-24, 26-52** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Reps, in view of Cohen, Killian (US 6,438,592 B1), hereinafter Killian.

19.   As for claim 13, Reps discloses a performance management system that

monitors data transferred between at least one remote site and at least one user site

(col. 1, lines 24-50), comprising:

a network browser (web browser, fig. 6) disposed on a first user site of the at

least one user site and configured to browse the at least one remote site, in response to

a request by a user of the first site, for transferring data between the at least one remote

site and the first user site (col. 5, lines 24-42; col. 17, lines 45-63);

a client application residing on the first user site of the at least one user site

(AMA application program; 203, fig. 2), the client application comprising:

a data gathering module that is adapted to capture at least the performance data

of data transfer operations that effect data transfer between the first user site and the at

least one remote site initiated by network browser requests initiated by a user of the first

user site, the performance data including at least communication data indicative of

network performance statistics for data transfers, and the performance data being

associated with individual web page object retrievals (col. 5, lines 17-23; col. 6, lines 19-

54; col. 9, lines 59 – col. 10, line 28); and

an agent that is adapted to create preliminary summary data from at least the

performance data for transmission to at least one server from the client application,

wherein the preliminary summary data includes summaries of at least the individual

object retrievals from the at least one remote site, wherein the at least one remote site

and at least one user site do not need to acknowledge each other (servers 104, fig. 1;

col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31).

20.   Although Reps discloses network performance statistics for data transfer (figs. 7-

12; col. 13, line 66 – col. 14, line 39; col. 1, lines 24-49), and network performance

associated with a user site (col. 13, line 66 – col. 14, line 39, "time of day of the service

request and total duration of the transaction cycle from request to response"; wherein

the request inherently sends from the web browser), Reps does not specifically disclose

network performance statistics for web browser. Cohen explicitly discloses network

performance statistics for web browser (12, fig. 1; col. 10, line 49 – col. 11, line 53; col.

3, lines 40-67; col. 4, line 62 – col. 5, line 63). It would have been obvious to one of

ordinary skill in the art at the time of the invention to combine the teachings of Reps and

Cohen because Cohen's network performance statistics for web browser would trace of

experts' browsing and search behavior (Cohen, col. 2, lines 48-67).

21.   Reps teaches capturing performance data associated with the transfer of HTML

based applications over the internet (col. 8, lines 56-64). However, Reps does not

explicitly teach capturing performance data associated with web page object retrievals.

Killian teaches capturing performance data associated with web page object retrievals

(col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the

time of the invention to modify Reps by capturing performance data associated with web

page object retrievals in order to improve the performance provided by web servers to

client computers, as taught by Killian (col. 3, lines 20-22).

22.   As for claim 14, Reps teaches the performance management system according

to claim 13, wherein the client application is adapted to simultaneously integrate with at

least a network level interface and an application level interface for measurement and

collection of the communication data and the application data (col. 5, lines 17-62).

23.   As for claim 16, Reps teaches the performance management system of claim 13,

wherein the client application is adapted to combine the captured communication data

and application data gathered from the network level interface and the application level

interface into a single page performance record to link the communication data and

application data (col. 5, lines 17-62).

24.   As for claim 18, Reps teaches the performance management system according

to claim 13, wherein the received performance data is used to determine overall usage

of a data access system (Figs. 8-10).

25.   As for claim 19, Reps teaches the performance management system according

to claim 13, wherein the received performance data is used to ascertain a quality of

service based on an aggregated end user response to a data access system (Figs. 8-

10).

26.   As for claim 20, Reps teaches the performance management system according

to claim 13, wherein the received performance data is used to analyze aggregated end

user response based on actions taken within a data access system and wherein the

aggregated end user response is used to infer user behavior (col. 6, line 66 – col. 7, line

13).

27.   As for claim 21, Reps teaches the performance management system according

to claim 20, wherein the received performance data is used to generate graphical

illustrations of aggregated end user response in combination with actual performance

within a data access system (col. 5, lines 39-45).

28.   As for claim 22, Reps teaches the performance management system according

to claim 13, wherein the client application is adapted to queue a predetermined number

of immediately preceding page performance measurements for transmission or internal

assessment (col. 5, lines 39-45).

29.   As for claim 23, Reps teaches the performance management system according

to claim 22, wherein the client application is adapted to transmit the queued page

performance measurements when instructed by the at least one monitoring server or in

response to the internal assessment (col. 5, lines 39-45).

30.   As for claim 24, Reps teaches the performance management system according

to claim 13, wherein the client application is adapted to respond to and transmit a

configurable number of subsequent page performance measurements based on a set of

received rules including a number of pages to transmit or a duration of time to transmit

subsequent pages (col. 5, lines 43-62).

31.   As for claims 29-37, 40 and 42-45, Reps teaches the use of configuration

information to adjust the specific monitoring parameters (col. 11, line 42 – col. 12, line

27). However, Reps does not appear to explicitly teach a client application receiving instructions from a server. However, Killian explicitly teaches a client application receiving instructions from a monitoring server in order to adjust the monitoring parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by receiving instructions from a server at a client application in order to optimize the monitoring parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

32.   As for claims 26-28, Reps teaches requesting and caching objects for configurable period of time, however, Reps does not specifically teach that the objects may comprise graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames. Killian teaches performance monitoring for objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by using objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames in order to monitor performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

33.   As for claims 38, 39 and 41, Reps teaches a graphical user interface

communicating metrics associated with object retrievals (Figs. 8-10), however, Reps

does not specifically disclose that the objects may comprise web page objects. Killian

teaches obtaining metrics for web page object retrievals in order to monitor performance

parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to

one of ordinary skill in the art at the time of the invention to modify Reps by

communicating metrics associated with web page object retrievals in order to monitor

performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-

63).

34.   As for claim 46, Reps teaches the performance management system according

to claim 13, wherein the at least one monitoring server is adapted to collect, aggregate,

and display performance data associated with predefined individual objects measured

by the agent (col. 6, lines 15-54).

35.   As for claim 47, Reps teaches the performance management system according

to claim 13, wherein the at least one monitoring server is adapted to store, display and

determine trends based on performance data that is associated with individual objects

measured by the agent (col. 6, line 15 – col. 7, line 13; Figs. 8-10).

36.   As for claim 48, Reps teaches the performance management system according

to claim 13, wherein the at least one monitoring server is adapted to collect and

aggregate performance data for comparison to predefined performance based threshold

settings (col. 5, lines 63-67).

37.   As for claim 49, Reps teaches the performance management system according

to claim 13, wherein the at least one monitoring server is adapted to create, store, and

evaluate performance thresholds settings based on at least one of metric values, metric

value percentage differences, direct metric comparison with other metrics, historical

metric values, and metric value rate of change calculations (col. 5, line 63 – col. 6, line

62).

38.   As for claim 50, Reps teaches the performance management system according

to claim 13, wherein the at least one monitoring server is adapted to monitor

performance threshold settings and, if predetermined values are exceeded, provide

automated user indications including at least one of email alerts, pager alerts, user

interface notifications, and network level diagnostic operations (col. 5, lines 63-67).

39.   As for claim 51, Reps does not explicitly disclose stopping the data transfer

operation at the request of a user. However, the Examiner finds that this is inherent to

the network browser disclosed by Reps (col. 17, lines 45-63). That is, any standard

network browser includes a function for stopping data transfer operations (e.g., the stop

button in Internet Explorer), as would be apparent to one of ordinary skill in the art.

40.   As for claim 50, Reps teaches wherein the application data are indicative of at

least one of browser imposed latency (col. 16, lines 19-32), user experience (col. 10,

lines 1-15), user reaction (col. 3, lines 24-39), and user tolerance (col. 4, lines 33-46) to

data transfer characteristics as measurable from the network browser.

Conclusion

41.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure:

Subramonian et al, US 6,701,362, Boyd et al, US 6,360,261, Barclay, US 6,704,732,

disclose a method and system for monitoring and recording information related to a

user's activities associated with one or more web pages hosted by the web server.

42.   Applicant's arguments with respect to Claims 1-14, 16, 18-24 and 26-52 have

been considered but are moot in view of the new ground(s) of rejection.

43.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jungwon Chang whose telephone number is 571-272-

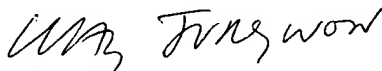3960. The examiner can normally be reached on 9:30-6:00 (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John A Follansbee can be reached on 571-272-3964. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

February 16, 2007

JUNGWON CHANG
PRIMARY EXAMINER
TECHNOLOGY CENTER